IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.3747 of 2006

Veersingh Banarasi Rajdo — Petitioner
Vs.
The Principal,
Smt.Chandibai Himmathmal
Mansukhani College & ors. — Respondents

Mr.Ashutosh Gole for petitioner.

Ms.Tanu Mehta h/f. Mrs.Aparna Shinde for respondent nos.1 and 2.

CORAM: B.H.MARLAPALLE & J.H.BHATIA,JJ.

November 16, 2006.

P.C.

1. Heard. Rule. Ms.Tanu Mehta h/f. Mrs.Aparna Shinde waives service for the respondent nos.1 and 2. Respondent no.3 is not a necessary party and hence ordered to be deleted forthwith. Rule is taken up for hearing forthwith.

2. The petitioner had approached the Tribunal with an appeal under Section 59 of the Maharashtra Universities Act, 1994 and as the appeal was moved beyond the period of limitation of 30 days, a separate application registered as Misc. Application No.12 of 2005 was filed for condonation of delay. By the impugned order dated 7/4/2006 the learned

Presiding Officer of the Tribunal was pleased to reject the said application.

3. The order of alleged oral termination was dated 7/6/2005 and the appeal was presented on 23/12/2005 whereas the last date for presenting the appeal would be 6/7/2005. Thus there was a delay of 5 months and 16 days in approaching the Tribunal. The petitioner had claimed that he was suffering from infective hepatitis (jaundice) and he was, therefore, advised rest from 15/7/2005 to 10/12/2005. As per the Tribunal this was not a satisfactory reason and in any case the certificate issued by the doctor and the affidavit filed by him could not make out good and sufficient reasons to condone the delay. As per the Tribunal the applicant failed to give any satisfactory explanation for the delay from 7/7/2005 to 10/12/2005 and from 11/12/2005 to 23/12/2005 and the explanation furnished that he was advised rest during the period from 15/7/2005 to 10/12/2005 was unsatisfactory.

4. As per the proviso below sub-section 2 of Section 59, an appeal is required to be filed within a period of thirty days from the date of receipt of

the order impugned. However, sub-section 3 of Section 59 states that notwithstanding anything contained in sub-section 2, the Tribunal may entertain an appeal made to it after the expiry of the said period of 30 days, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within that period. The appellant was purportedly working as a peon-cum-mali under the respondent no.1-College from 26/8/2001 and no appointment order was issued in his favour. After he had put in about four years service, he was discontinued allegedly as per the oral orders. Initially he was being paid a monthly remuneration of Rs.1500/- which was increased to Rs.1750/- from November 2004 onwards. While considering the application for condonation of delay we need not follow a hypertechnical approach and more so when the appeal was being filed against an order of alleged illegal termination after putting in about more than four years of service and in the instant case the delay was of about 168 days. It was not a case where the applicant had exhibited casualness or lethargy so as to unsuit him on the point of delay. Looking at the financial condition of the petitioner and the post he was holding, we are of the considered view

that his appeal deserved to be heard and decided on merits rather than closing the doors of the appellate remedy on the point of delay which is not so exorbitant as not to pardon him.

5. We, therefore, allow the petition and quash and set aside the impugned order dated 7/4/2006. Consequently Misc. Application No.12 of 2005 filed before the Mumble University and College Tribunal is hereby allowed. Appeal be registered.

6. Rule made absolute accordingly with no order as to costs.

(J.H.BHATIA,J.) (B.H.MARLAPALLE,J.)